

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID R. GLOVER,)	8:04CV561
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	

This is an appeal of a final agency decision under the Social Security Act. In lieu of a brief on the merits, the defendant has filed a Motion to Remand (filing 20) pursuant to sentence four of 42 U.S.C. § 405(g). The motion represents that Plaintiff's counsel has been contacted and has no objection to the motion.

The defendant's motion states that upon Agency Counsel's recommendation, the Appeals Council determined that a remand for additional proceedings before an Administrative Law Judge was appropriate due to the ALJ's finding that the treating physician's treatment notes did not support her opinion without discussion of the treating physician's treatment notes and other medical evidence dated after April 2003. The defendant requests that this matter be remanded for (1) reevaluation of the treating physician's opinion in light of subsequent treatment records; (2) reevaluation of evidence with respect to Plaintiff's alcohol usage as of April 2003; (3) a medically supported residual functional capacity finding; and (4) vocational expert testimony, if required.

Because the court construes the defendant's Motion to Remand as a concession of error at the administrative level which brings into question the decision below, and because the government specifically concedes that this matter should be remanded pursuant to sentence four of 42 U.S.C. § 405(g), I shall reverse and remand this matter to the Commissioner for the above-stated reasons. See Finch v. Apfel, 993 F. Supp. 712 (E.D. Mo. 1998) (sentence-four remand appropriate when Commissioner's request for remand was based on ALJ's failure to properly treat the evidence before him).

Accordingly,

IT IS ORDERED that:

1. Defendant's motion to remand (filing 20) is granted;
2. This matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) in order to allow the Commissioner to (1) reevaluate the treating physician's opinion in light of subsequent treatment records; (2) reevaluate evidence with respect to Plaintiff's alcohol usage as of April 2003; (3) render a medically supported residual functional capacity finding; and (4) procure vocational expert testimony, if required.
3. Judgment shall be entered by separate document.

July 13, 2005.

BY THE COURT:
s/Richard G. Kopf
United States District Judge

